TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 3[illegible]

THE UNITED STATES, APPELLANT

vs.

CHARLES A. [illegible]

APPEAL FROM THE COURT OF CLAIMS

FILED JUNE 24, 1925

(29706)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 98

THE UNITED STATES, APPELLANT

vs.

CHARLES A. MORROW

APPEAL FROM THE COURT OF CLAIMS

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1 Court of Claims of the United States

CHARLES A. MORROW
vs.
THE UNITED STATES
No. A-244

I. *Petition and amended petition*

On August 9, 1921, the plaintiff filed his original petition. Subsequently, to wit, on February 21, 1922, by leave of court, the plaintiff filed his amended petition. Said amended petition is as follows:

II. *Amended petition*

Filed February 21, 1922

To the Honorable the Court of Claims:

The claimant, Charles A. Morrow, respectfully represents:

1. He is a native-born citizen of the United States, having been born in the State of Iowa. He served as field clerk, Q. M. C., United States Army, under the act of August 29, 1916 (39 Stat. 626), to December 22, 1917, on which date he was called to active duty as captain Q. M. C., Officers Reserve Corps, which appointment was held by him until August 6, 1918, when the merging by the War Department, at the direction of the President, of the Regular Army, the National Army and Officers Reserve Corps into the United States Army, his designation became captain, Q. M. C., United States Army, which appointment he in turn held until Sept. 8, 1918, when promoted to grade of major, same service, until August 7, 1920, when again appointed captain August 8, 1920, until October 10, 1920, on which date he accepted an appointment as captain in the Regular Army of the United States to rank from July 1, 1920, in which rank he is still serving in the Regular Army.

2 II. He has been credited with pay as a captain December 22, 1917, to September 8, 1918; as a major September 9, 1918, to August 7, 1920, and as a captain August 8, 1920, until the present time, from which has been withheld by periodical deductions, a sum totaling $508.89, representing an alleged erroneous payment by a settlement of the Auditor for the War Department, in allowing him, under date of June 6, 1917, by virtue of the act of April 27, 1914 (38 Stat. 355) additional pay at the rate of $200 per annum from July 1, 1914, to January 16, 1917.

III. Prior to July 1, 1914, and until January 16, 1917, claimant served as a civilian clerk under the War Department in the Philippine Islands, for which he received by said settlement of the Auditor for the War Department $200 a year increase in pay. On or about February 12, 1919, the Comptroller of the Treasury decided that only those employees mentioned by the Act who had traveled from the United States to the Philippine Islands were entitled to the extra

compensation of $200 a year, whereupon the Auditor for the War Department reopened his settlement with the claimant and stated an account against him in the amount of $508.89, which sum was dededucted from his regular pay as a captain or as a major in the United States Army by direction of the Secretary of War.

IV. Claimant alleges that the deduction of the sum of $508.89 from his pay as an officer in the United States Army was unwarranted and that he is entitled to recover the amount deducted. He therefore claims $508.89.

V. This claim is based upon the act of May 11, 1908 (38
3 Stat. 108), fixing the pay of officers of the Army, and the act of April 27, 1914 (38 Stat. 355), authorizing $200 a year increase to civilian clerks of the War Department serving in the Philippine Islands.

No other action has been had on said claim in Congress or by any of the departments; no person other than the claimant is the owner thereof or interested therein; no assignment or transfer of this claim, or of any part thereof or interest therein, has been made; the claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets; the claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government. The claimant is a citizen of the United States. And the claimant claims five hundred and eight dollars and eighty-nine cents ($508.89).

KING & KING,
Attorneys for Claimant.

[Jurat showing the foregoing was duly sworn to by Charles A. Morrow. Omitted in printing.]

4 III. *General traverse*

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendant, a general traverse is entered as provided by Rule 34.

IV. *Argument and submission of case*

On December 5, 1922, this case was argued and submitted on merits by Mr. George A. King, for plaintiff, and by Mr. John G. Ewing, for defendant.

V. *History of proceedings*

On January 2, 1923, the court filed findings of fact and conclusion of law and entered judgment for plaintiff in the sum of $508.89, with an opinion by Graham, J.

On February 28, 1923, the defendant filed a motion for a new trial. Said motion was argued and submitted on March 19, 1923.

On March 26, 1923, the court entered an order overruling defendants motion for new trial and filed amended findings, dated as of January 2, 1923.

Said findings (as amended), conclusion of law, and opinion, are as follows:

VI. *Findings of fact (as amended), conclusion of law, and opinion of the court by Graham, J.*

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT.

I.

The plaintiff, Charles A. Morrow, a native-born citizen of the United States and of the State of Iowa, went to the Philippine Islands in October, 1899, as an enlisted man of the U. S. Volunteers, U. S. Army, under the act of March 2, 1899, chapter 352, sec. 12, 30 Stat. 980. Upon being discharged therefrom in the Philippine Islands, he was, February 28, 1901, appointed a temporary clerk, which appointment later became permanent, and has ever since continued in the service of the United States. He was from October 2, 1913, serving as chief clerk in the office of the Department Quartermaster, Philippine Department, at $2,500 per annum; and from May 15, 1914, as chief clerk of the depot quartermaster's office, in both cases as a clerk at the headquarters of said Philippine Department, at Manila, Philippine Island. His salary prior to and on July 1, 1914, was $2,000 a year and so continued during all the period covered by this claim. There was no further change in his official designation or place of service until January 17, 1917, when he accepted appointment as field clerk, Quartermaster Corps. Subsequently, November 24, 1917, he was appointed captain, Quartermaster Corps, Officers' Reserve Corps, and since that date has served continuously either as an officer of the Reserve Corps on active duty or as a major under an emergency commission, or since July 1, 1920, as a captain, Quartermaster Corps, Regular Army, in which rank he is still serving in the Army.

II.

From and after July 1, 1914, he received no increase of salary on account of service in the Philippine Islands. Later he submitted to the Auditor for the War Department a claim for increase at the rate of $200 a year for the time of his service as clerk at the headquarters, Philippine Department, from July 1, 1914, to January 16, 1917. Said claim was allowed and paid him, in the sum of $508.89.

Still later said amount, $508.89, was checked against him as having been erroneously paid and was deducted from his subsequently accruing pay as a captain, Quartermaster Corps, Regular Army, and has never been restored to him.

6 CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is entitled to recover the sum of $508.89.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of five hundred and eight dollars and eighty-nine cents ($508.89).

OPINION.

GRAHAM, Judge, delivered the opinion of the court.

There is but one question to be determined by this case, and that is whether the plaintiff's claim comes within the purview of the identical provision contained in the act of April 24, 1914, 38 Stat. 355, and March 4, 1915, 38 Stat. 1057, which is as follows:

"That on and after July 1, 1914, the pay of clerks and messengers at headquarters of territorial departments, tactical divisions, brigades, and service schools, who are citizens of the United States, shall be increased $200 each per annum while serving in the Philippine Islands, such service to be computed from the date of departure from the continental limits of the United States to the date of return thereto."

The plaintiff, prior to July 1, 1914, was serving as a clerk in the Quartermaster Corps in the capacity of chief clerk of the depot quartermaster's office at headquarters of the Philippine Department, United States Army, at Manila, Philippine Islands. He thereafter continued to serve in the same capacity until January 17, 1917, when he was appointed as a field clerk, Quartermaster Corps.

Shortly after that date he presented a claim to the Auditor for the War Department for an increase of $200 per annum on his regular salary from July 1, 1914, to January 16, 1917, under the provisions of the aforesaid act. The claim was allowed and paid in the sum of $508.89.

Subsequently, on November 24, 1917, he was appointed a captain in the Quartermaster Corps, Officers' Reserve Corps, and has since continuously served as an officer of the Reserve Corps on active duty as major under an emergency commission, and since July 1, 1920, as a captain, Quartermaster Corps, Regular Army, in which grade he was serving in the Army at the time of the institution of this suit.

Later, on June 15, 1920, the aforesaid sum of $508.89 paid him, as aforesaid, was checked against him as having been erroneously paid, and was subsequently deducted from his pay as captain in the Quartermaster's Corps of the Regular Army, and has never been repaid to him.

The plaintiff was a native-born citizen of the State of Iowa and, so being, went to the Philippine Islands in October, 1899, as an enlisted man in the United States Volunteers, United States Army, and has remained a citizen thereof.

After his discharge from this service in the Philippine Islands, he was, on February 28, 1901, appointed temporary clerk, which ap-

pointment was later made permanent, as aforesaid, in the Quartermaster's Corps, and from May 15, 1914, acted as chief clerk, quartermaster's office at headquarters in the Philippine Islands, at Manila, until he accepted the above appointment as field clerk, Quartermaster's Corps, January 17, 1917.

7 It is plain that the primary and fundamental purpose of the above-quoted acts was to secure as clerks and messengers at the headquarters of territorial departments, tactical divisions, brigades, and service schools of the Army persons who were citizens of the United States, and that this was a wise purpose.

That the plaintiff was a citizen of the United States within the meaning of the act is admitted, and it is also apparent that his previous experience in connection with the work of the Quartermaster's Department in the Philippines as well as his actual prior service in the Army made him particularly desirable for the service to promote the efficiency of which this act was passed.

As an inducement to citizens of the United States to enter this service $200 extra per annum from the time of departure from until the return to the United States was incorporated in the act.

It was known that a trip to the Philippines and return was expensive and that, as a place of continued residence for any length of time, it was undesirable, particularly for natives of the United States, and, hence, the wisdom of this provision for additional salary, not only to meet the expense of travel but as an inducement for continued service in the islands, is apparent. This was the purpose of this provision: "Such service to be computed from the date of departure from the continental limits of the United States to the date of return thereto." It was an inducement to residents of the United States to leave it for the service. In the case of the plaintiff his pay commenced when the actual service began.

It is not its purpose to limit the fundamental purpose of the act by confining it to citizens of the United States who should go from the United States to the Philippine Islands—in other words, who were residents of the United States prior to the time of their departure. Such a construction, in view of the purpose of the act, would but limit and obstruct the object it was desired to accomplish.

The mere fact that the plaintiff was for the time residing in the Philippine Islands does not exclude him from the benefits of the statute. Statutes of a similar general character and purpose have been given a liberal construction and held to apply to residents of our island possessions where they come within the general class of service provided for. Vulte *v.* The United States, 47 C. Cls. 324. Of course, in this case the statute would not apply to a resident of the islands who was not a citizen of the United States, as citizenship is required, but it does not follow that it does not apply to a citizen who is a resident.

The plaintiff possessed the qualification of citizenship which it was the purpose of the act to secure for the service and in addition a fitness born of experience in the service to be performed.

In this view of the case the plaintiff should recover and judgment should be entered in favor of the plaintiff in the sum of $508.89, as claimed in the petition, and it is so ordered.

Hay, Judge; Downey, Judge, and Campbell, Chief Justice, concur.

8 VI. *Judgment of the court.*

At a Court of Claims held in the City of Washington on the second day of January, A. D. 1923, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the plaintiff, and do order, adjudge, and decree that the plaintiff, as aforesaid, is entitled to recover and shall have and recover of and from the United States the sum of five hundred and eight dollars and eighty-nine cents ($508.89).

BY THE COURT.

VII. *Defendant's application for appeal.*

Filed June 11, 1923.

From the judgment rendered in the above-entitled cause on the 26th day of March, 1923, in favor of claimant, the defendant, by its Attorney General, on the 11th day of June, 1923, makes application for, and gives notice of, an appeal to the Supreme Court of the United States.

ROBERT H. LOVETT,
Assistant Attorney General.

VIII. *Order of court allowing appeal.*

It is ordered by the court that the defendant's application for appeal be and the same is allowed.

Entered June 18, 1923.

9 In Court of Claims of the United States

Clerk's certificate

Filed June 20, 1923

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact, conclusion of law, and opinion of the court by Graham, J., of the judgment of the court; of the defendant's application for appeal; of the order of court allowing appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this twentieth day of June, A. D. 1923.

F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

(Indorsement on cover:) File No. 29,706, Court of Claims. Term No. 98. The United States, appellant, vs. Charles A. Morrow. Filed June 26th, 1923. File No. 29,706.

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In the Supreme Court of the United States

OCTOBER TERM, 1924

THE UNITED STATES, APPELLANT,
v.
CHARLES A. MORROW
No. 98

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

STATEMENT OF CASE

Charles A. Morrow, a native born citizen of the United States, went to the Philippine Islands in October, 1899, as an enlisted man of the United States Volunteers, United States Army, under the Act of March 2, 1899 (30 Stat. 980). Upon being discharged therefrom in the Philippine Islands, he was while in the Philippine Islands on February 28, 1901, appointed a temporary clerk, which appointment later became permanent and he has ever since continued in the service of the United States. He was from October 2, 1913, serving as chief clerk in the office of the Department Quartermaster, Philippine Department, at $2,500 per annum; and from May 15, 1914, as chief clerk of the Depot Quarter-

master's Office; in both cases as a clerk in the Depot Quartermaster's Office at the headquarters of said Philippine Department at Manila, Philippine Islands. His salary prior to and on July 1, 1914, was $2,000 a year, and so continued during all the period covered by his claim. There was no further change in his official designation or place of service until January 17, 1917, when he accepted appointment as field clerk, Quartermaster Corps.

From and after July 1, 1914, he received no increase of salary on account of service in the Philippine Islands. Later he submitted to the auditor for the War Department a claim for increase at the rate of $200 a year for the time of his service as clerk at the headquarters, Depot Quartermaster's Office, Philippine Department, from July 1, 1914, to January 16, 1917. Said claim was allowed and paid in the sum of $508.89. Later said amount of $508.89 was checked against him as having been erroneously paid and was deducted from his subsequently accruing pay as a captain, Quartermaster Corps, U. S. Army, and has never been restored to him.

Morrow began action in the Court of Claims for the said $508.89. His claim is based upon the contention that he comes within the purview of the identical provision contained in the Acts of April 24, 1914 (38 Stat. 355), and of March 4, 1915 (38 Stat. 1067). Said proviso upon which Morrow relied in the Court of Claims reads as follows:

> *Provided*, That on and after July first, nineteen hundred and fourteen, the pay of clerks

> and messengers at headquarters of territorial departments, tactical divisions, brigades, and service schools, who are citizens of the United States, shall be increased $200 each per annum while serving in the Philippine Islands, such service to be computed from the date of departure from the continental limits of the United States to the date of return thereto.

The Court of Claims rendered a judgment in favor of Morrow on January 2, 1923, for the sum of $508.89. The findings of fact and conclusion of law are set out on pages 3 and 4 of the record, with the opinion of the court. Notice of appeal was thereupon given and the appeal allowed by the presiding judge.

The decision in this case will control a large number of similar claims, some 60 of which have already been filed in the Court of Claims for sums running from $500 to $2,000 each.

ARGUMENT

I

The court below erred in holding that under the proviso in the Acts of April 24, 1924, and March 4, 1915, Morrow was entitled to an increase in salary of $200 per annum, during the period from July 1, 1914, to January 16, 1917

The sole question in this case is whether the claimant, Morrow, is entitled to the sum found due him by the Court of Claims under the proviso contained in the Acts of April 24, 1914, and March 4, 1915.

The position of the United States is that when the proviso is read in connection with the context of the acts of which it is a part and in the light thrown on

them by their history, it is clear that the claimant, Morrow, was not one of the clerks referred to in the proviso and was not, therefore, entitled to benefit therefrom.

To get a proper perspective of the question, it is necessary to go back into a consideration of the Acts providing for the appointment of clerks and messengers, civilian employees, at the different headquarters and stations of the United States Army.

The Act of July 29, 1886 (24 Stat. 167), entitled "An Act for the enlistment and pay and to define the duties and liabilities of 'general-service clerks' and 'general-service messengers' in the Army," provided for the enlisting of 125 general-service clerks and 45 general-service messengers, who were to be assigned to duty at the several posts and stations of the Army. The Act of August 6, 1894 (28 Stat. 236), repealed the preceding Act and provided for the appointment of 125 clerks and 45 messengers to be employed and apportioned to the several headquarters and Army stations by the Secretary of War. The salary of each of said clerks and messengers was specifically fixed in the said Act and was specifically appropriated in each successive Army appropriation bill since 1894 under varying heads, as "For clerks and messengers at the headquarters of the Army and several territorial departments, etc."; "Pay to clerks and messengers at department headquarters, at headquarters of the Army or that of the Chief of Staff," and "Clerks and messengers at headquarters of the several territorial departments, territorial

districts, tactical divisions, and brigades and service schools." (See Appendix A for the items of the Act of August 6, 1894, and a summary of the similar items in the successive Army appropriation acts for 1896–1914 for said class of clerks.)

The number of said clerks and messengers whose salaries were so appropriated varied from year to year. These clerks who were upon the statutory roll, as paid out of these successive statutory appropriations, were known in the War Department as headquarters clerks, since they had a definite status and fixed salary by Act of Congress and were thus distinguished from the clerks, who were on the field roll of the staff departments, and whose salaries were paid out of lump-sum appropriations and were not fixed by Act of Congress either as to number or salary.

Paragraphs 727 and 728, Army Regulations, 1913, provide in part as follows:

> 727. In the staff corps and departments the employment of civilians will be regulated by the respective chiefs of bureaus under the direction of the Secretary of War.
>
> 728. The clerks and messengers authorized by the Act of Congress of August 6, 1894, will be employed and apportioned to the several headquarters and stations by the Secretary of War and will not be transferred without his authority. All messenger service at the several department headquarters, except for staff officers not assigned to the headquarters staff, and, as far as practicable, all clerical services thereat will be performed by this class of employees.

An administrative arrangement for increasing the pay of civilian clerks, transferred to duty in the Philippines, was promulgated by the War Department pursuant to a policy adopted in 1904 in its General Orders, No. 68, of April 11, 1904, which reads as follows:

> Clerks transferred to the Philippines will be allowed an increase of $200 in annual compensation, to take effect on the date of leaving station in the United States, unless, with regard to those paid from the appropriation for clerks at military headquarters, conditions relating to such appropriation make it necessary to have the increase commence at a later date. Clerks so transferred will be allowed transportation and expenses *en route* from station in the United States to station to which assigned in the Philippines.
>
> Clerks transferred from the Philippines will be reduced 20 per cent in compensation, provided that those paid from the appropriation for clerks at military headquarters, whose compensation is graded by law, will receive a reduction approximating 20 per cent as nearly as the grades fixed by law will permit; * * *. Such reduction will take effect on the date of arrival at proper station unless, with regard to those paid from the appropriation for clerks at military headquarters, conditions relating to such appropriation make it necessary to have the reduction commence at an earlier date.

The above-quoted General Orders of the War Department show the intention that in all cases

where clerks were transferred to the Philippine Islands they were to be granted an increase in salary of $200 per annum. However, it was not always possible to do this. If the clerk happened to be what was known in the Department as a headquarters clerk, that is, a clerk on the statutory roll as distinguished from a clerk on a field roll, whose salary was paid out of a lump sum appropriation, it was not always possible to grant the increase in salary to the headquarters clerk when he was transferred to the Philippines. This was due to the fact that the numbers, grades, and salaries of headquarters clerks were fixed by Act of Congress in each annual Army Appropriation Act. If at the time a headquarters clerk was to be transferred to the Philippine Islands no vacancy existed in a higher grade which permitted a promotion with an increase of $200 in salary, the clerk transferred to the Philippines would have to wait until a vacancy in a higher grade occurred before he could get the increase in salary. On the other hand, if the clerk to be transferred was not a headquarters clerk but was on a field roll and his salary was paid out of a lump sum appropriation, it was always possible for him to get the increase in salary, without specific authority from Congress, through action of the Secretary of War, set out in General Orders, No. 68.

Because of this condition, the Secretary of War on December 7, 1912, wrote a letter to the Speaker of the House upon the subject. This letter was by

the succeeding Secretary of War again transmitted to the Speaker on May 9, 1913, and its recommendations endorsed by him. Said letter was published as House Document No. 46, 63rd Congress, 1st Session, and referred to the Committee on Military Affairs. The pertinent part of said letter is as follows:

> I have the honor to invite attention to the provisions in the Act of Congress making appropriations for the support of the Army under the head "Pay of clerks, messengers, and laborers at headquarters of divisions and departments, posts commanded by general officers, and the office of the Chief of Staff." Under this provision, which has been on the statute books for years past, *there are now 44 clerks and 6 messengers* serving in the Philippines assigned to duty at the headquarters of the division, and departments of Luzon and Mindanoa, and at Fort McKinley, a brigade post, * * *. From repeated representations made to the Department by the military authorities, it is concluded that *the pay of these clerks while on this foreign service* is not at all commensurate with the class of work performed by them, and the commanding general, Philippines Division, in urging that some remedial measure be effected, states that, considered in connection with the grade of service performed, *the pay of the clerks is less than that of any other similar government employees in the Islands.* * * *. As there are no means that can be applied by the War Department to remedy this condition, it is

urgently recommended that Congress authorize a 20 per cent increase of pay *for this class of employees in the Philippines*, and I recommend that a provision to effect this be inserted in the next army appropriation bill under the head of "Pay to clerks, messengers, and laborers at headquarters of divisions, departments, posts commanded by general officers, and office of the Chief of Staff," and immediately following the total amount appropriated for such service:

Provided, That the pay proper of all clerks and messengers provided for in this paragraph who are citizens of the United States shall be increased at the rate of 20 per centum per annum while serving in the Philippine Islands, such service to be computed from the date of departure from the continental limits of the United States to the date of return thereto. (All but last italic ours.)

In consequence of the recommendations of the two Secretaries of the War Department, the matter was taken up by the Senate and House Committees, having before them the Army Appropriation Bill for 1915, being the bill which became the Act of April 27, 1914, upon which the claimant, Morrow, relies for his contention. In the House hearings, page 160, the following questions were put by the Chairman of the Committee and answered by the representative of the War Department:

The CHAIRMAN. How many clerks are employed altogether at headquarters in the Philippine Islands at the present time?

General ALESHIRE. In the Philippine Islands there are three clerks at $1,800, three at $1,600, ten at $1,400, twenty-five at $1,200, three at $1,000, making a total of 44 clerks and 6 messengers.

* * * * *

The CHAIRMAN. I see there is an increase of 20 per cent which would only apply to these headquarters.

General ALESHIRE. *That is all, sir. Mr. Chairman, the clerks in the other departments get an increase of pay.* When they leave this country and go to the Philippine Islands, *the clerks in the Quartermaster Corps get an increase of $200.*

The CHAIRMAN. That is under a provision made by the Appropriation Committee?

General ALESHIRE. No, sir. I think that is a ruling of the Secretary of War, and when they come back they lose 20 per cent of their pay.

The CHAIRMAN. How about the clerks in the other branches of the Department?

General ALESHIRE. *I think that applies to all employees except those specifically provided for in this bill. That is why they put in this increase.* (*Italics ours.*)

In the Senate hearings on the same Army Appropriation Bill, on page 871, General Aleshire made the following remarks to the Committee:

I did not intend to convey the impression that employees of other Departments transferred to the Philippine Islands received 20 per cent increase on their pay. *Under au-*

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> *thority of the Secretary of War civilian employees of the Quartermaster Corps, for instance, when transferred to the Philippine Islands for duty, have their pay increased $200 a year*, and upon their return to the United States their pay is fixed at 20 per cent less than that received while in the Philippine Islands. Such action with respect to the Quartermaster Corps is made possible *by reason of the fact that their salaries are paid from lump-sum appropriations.* As the employees referred to in this bill *are specifically appropriated for*, there are no funds available to provide a similar increase for foreign service pay. Therefore, the appropriation and legislation asked for are necessary to enable them to receive foreign service pay *similar to that paid employees of other departments.* (*Italics ours.*)

In consequence, the legislation sought for by the War Department was enacted (38 Stat. 355 and 38 Stat. 1067) under the head of "Pay to clerks, messengers, and laborers at headquarters of the several territorial departments, territorial districts, tactical divisions, and brigades, service schools and office of the Chief of Staff." There follows under said head an enumeration of clerks, messengers, and laborers, with the statutory pay for each. Then follows an appropriation, "Additional pay while on foreign service, $9,000." Then follows the proviso on which Morrow relies, namely:

> *Provided*, That on and after July first, nineteen hundred and fourteen, the pay of clerks and messengers at headquarters of territorial

> departments, tactical divisions, brigades, and service schools, who are citizens of the United States, shall be increased $200 each per annum while serving in the Philippine Islands, such service to be computed from the date of departure from the continental limits of the United States to the date of return thereto.

And the further proviso:

> *Provided*, That no clerk, messenger, or laborer at headquarters of tactical divisions, military departments, brigades, service schools, and office of the Chief of Staff shall be assigned to duty with any bureau in the War Department.

(See Appendix B for said legislation as enacted (38 Stat. 355 and 38 Stat. 1067) and for statement as to similar item in the act for 1916.)

The attention of the Court is called to the proviso in the successive appropriation acts and found also in the Act of April 27, 1914, that none of said clerks "shall be assigned to duty with *any bureau in the War Department*." It is clear from this that these clerks could not be clerks in any of the staff corps or staff departments of the Army. Bouvier in his law dictionary says of the word *bureau*, "In the classification of the ministerial officers of government and the distribution of duties among them, a bureau is understood to be a division of one of the great departments of which the Secretaries or chief officers constitute the Cabinet." Webster defines or gives as the equivalent of *bureau* "a department of public business requiring a force of clerks; the body of

officers in a department who labor under the direction of a chief." It is clear that the Quartermaster Corps was thus a bureau in the War Department. The clerks provided for and whose salaries were to be increased $200 per annum while serving in the Philippine Islands could not, therefore, under the statute be assigned to duty in the Quartermaster Corps.

In the Act of April 24, 1914, there are appropriations made on pages 353, 361, 362, 363, 364, 365, 366, 367, and 368, in lump sums for the payment of civilian employees for the staff corps and departments of the Army. The appropriations on page 362 are specifically for the hire of laborers and the compensation of clerks and other employees in the Quartermaster Corps. The War Department naturally, therefore, considered that there was a distinction under General Orders No. 68 between the clerks of the staff corps and departments paid from lump sum appropriations and clerks at military headquarters whose pay was fixed by statute; that this distinction resulted in an inequality of pay which was sought to be remedied and was remedied by the legislation requested by the Department and enacted, substantially in the language submitted by the Department, in the Acts of April 24, 1914, and March 4, 1915.

It is interesting and instructive in the construction of this Act to note the legislation set out in the Act of August 29, 1916, being "The Act making appropriations for the support of the Army for the year 1917." Said Act (39 Stat. 619, 625) provides, under

the head of "Clerks and messengers for headquarters of the several territorial departments, districts, divisions, and brigades, and service schools," as follows:

> Hereafter headquarters clerks shall be known as Army field clerks and shall receive pay at the rates herein provided, and after twelve years of service, * * *.

Thereafter immediately follows the paragraph:

> Hereafter not to exceed two hundred clerks, Quartermaster Corps, who shall have had twelve years service, * * * shall be known as field clerks, Quartermaster Corps.

(See Appendix C for the item of appropriation for said clerks and messengers, with all its provisos, and a summary of the item in the successive Army appropriation acts for 1918–1924).

This legislation made the headquarters clerks provided for in preceding appropriation acts, including those for the years 1915 and 1916, Army field clerks and, it also will be noted, provided for a certain number of the clerks in the Quartermaster Corps to become field clerks Quartermaster Corps. Throughout House Report No. 819, 64th Congress, 1st Session, the distinction is made clearly between what are described as the headquarters clerks and the clerks of staff departments and department headquarters. It will be noted by the Court that in the Act of April 27, 1914, there is inserted an appropriation following the list of the clerks and other employees, as follows: "Additional pay while on foreign service, $9,000." A similar appropriation occurs in each of the successive

Army appropriation acts affecting such employees in subsequent years. The amount appropriated by the Act of April 27, 1914, the Court will notice, would provide for the payment of 45 employees as on foreign service. The amounts appropriated, varying from year to year, never exceeded this sum. The number of clerks reported as in the Philippines when the Act of April 27, 1914, was under consideration is stated by the Army representative to have been 44. It seems conclusive that the pay provided was for not more than 45 clerks who were on service in the Philippines and who were included in the statutory clerks enumerated in the preceding list.

The legislation of the Act of August 29, 1916, having provided that the clerks specifically appropriated under the heading of "Clerks and Messengers for Headquarters, etc.," shall be known as Army field clerks, then provided for not to exceed 200 clerks of the Quartermaster Corps, "who shall have had twelve years of service, etc.," to become field clerks, Quartermaster Corps. The attention of the court is called to the fact that in the findings of fact of the court below (Rec. p. 3) it is stated that on January 17, 1917, Morrow accepted appointment as *field clerk, Quartermaster Corps.* This appointment was under the provisions of the Act of August 29, 1917, and it is evident that for twelve preceding years Morrow was a *clerk in the Quartermaster Corps* and not *one of the headquarters clerks.* The attention of the court is called to the House Report No. 819, 64th Congress, 1st Session, dis-

cussing this item of the appropriation set out in the Act of August 29, 1916, for clerks and messengers for headquarters. Throughout the entire discussion of this item set out in said report, the distinction is clearly made between what are described as the headquarters' clerks and the civilian clerks of other staff departments and of department headquarters.

With this review of the successive acts dealing with the civilian employees who were originally known as general-service clerks, afterwards as civilian clerks at headquarters or headquarters clerks, and then entitled Army field clerks, it is clear that the court below in its construction of the Acts of April 24, 1914 and March 4, 1915, erred in considering that Morrow, who was a clerk in the Quartermaster Corps at the headquarters, Quartermaster Corps, in the Philippine Islands, was one of the clerks provided for in the legislation of said Acts as a clerk at headquarters, who were to receive under the provisos of said Acts an increase of $200 per annum while serving in the Philippine Islands. If the contention of the Court and its interpretation of this Act be sustained, then the authority of the War Department to fix by contract the pay of a civilian employed in the Philippine Islands under a lump-sum appropriation is denied, no matter what amount was agreed upon; for even though pay so fixed involved an increase of $200 per annum during service in the Philippine Islands, the decision of the Court of Claims adds $200 per annum more thereto. Thus the civilian clerks employed in the Philippine Islands, as in the instance of Morrow,

paid from lump-sum appropriations might and would under the policy of the War Department and the decision of the Court of Claims gain an increase of $400 per annum in their salaries. It is clear that the court erred in extending the proviso of the two Acts to clerks other than those enumerated in the appropriation to which said proviso was attached. The whole history of the civilian clerks at headquarters from the time of the original authority to employ the same up until the designation and setting apart of the said headquarters clerks as Army field clerks shows the error committed by the court in its construction of these Acts.

II

The court below erred in holding that Morrow, appointed a clerk in the Quartermaster Corps, while he was a resident in the Philippine Islands, was entitled to an increase of $200 per annum in his salary while serving in the said Philippine Islands

The above examination of the history of the headquarters clerks and their distinction from the clerks paid for under lump sum appropriations is in the eyes of counsel sufficiently conclusive of the error of the court in giving judgment in favor of Morrow, but it might be well to note the opinion of the court on the question that was raised as to the right of Morrow in any case, since he was appointed in the Philippine Islands, to any increase, by judgment of the court, of his salary by the sum of $200 per annum for the period of his claim.

The court below found in the case of Morrow that the contention of the United States, that the pro-

vision of the Acts of April 24, 1914, and March 4, 1915, was limited and confined to clerks, citizens of the United States, who should go from the United States to the Philippine Islands, "would only limit and obstruct the object the act was desired to accomplish." The court held that the fact that the plaintiff was for the time residing in the Philippine Islands and was so residing when he was appointed does not exclude him from the benefit of the statute.

It is clear that the court is here in error, as can be seen from the history of the civilian clerks set out in the preceding argument. The civilian clerks in the Quartermaster Corps were paid out of lump-sum appropriations under the regulations of the War Department. The determination of the salaries of the employees in the Quartermaster Corps was not by any statutory enactment but by direct appointment and contract with each such employee by the Secretary of War. It is clear that when appointments were made by the Secretary of persons permanently resident at the time of their appointment in the Philippine Islands, the determination made of their salary was according to the policy of the War Department fixed at a rate justified by the existing conditions at the time and place of appointment, namely, the Philippine Islands, and the acceptance of the position and salary as tendered constitutes the contract of employment and fixes the compensation to be paid. The Court can properly presume that the salary fixed for Morrow by the Secretary was fixed in accordance with the same rule and regulation which had governed the acts of the Department ever

since the year 1904. Therefore, the attempt to give Morrow an increase in salary of $200 per annum was simply adding to his salary fixed by the Secretary, in view of his residence in the Philippine Islands, a sum which undoubtedly was contemplated and included in the salary first determined by the Secretary for said Morrow at the time of his appointment. The question of whether or not a staff clerk, such as Morrow, whose salary was payable from a lump-sum appropriation and who was originally appointed while residing in the Philippine Islands, was given an increase of $200 at the time of his original appointment might be determined by a comparison of the salary paid to such clerk with the salary paid to a clerk performing similar duties in the United States. The difficulty of reaching a solution on this basis, however, is to determine what are similar duties. The duties of clerks in the War Department are so many and so varied and the salary paid to clerks performing such duties being dependent not only upon the ability of the clerk but also upon the nature of the duties and upon the length of time he has been in the service, any such comparison would be of little assistance. In each case where the clerk was appointed to a position of a staff clerk when at the time of his appointment he was residing in the Philippine Islands, it must be assumed that under the policy of the Department he was granted an increase of $200 per annum over what he would have been paid if he had been appointed to a similar position in the United States. It is evident, therefore, that if the staff clerk originally appointed while re-

siding in the Philippine Islands is allowed an additional $200, as was Morrow by the decision of the Court of Claims, it would result in his receiving an increase of $400 over what he would have received if the duties had been performed in the United States.

Further, the proviso in the Acts of the increase of $200 runs as follows, "is to be computed from the date of departure from the continental limits of the United States to the date of the return thereto." Thus a prerequisite to such computation is evidently an employment within the continental limits of the United States and a subsequent transfer or detail to duty requiring residence in the Philippine Islands and *departure from the continental limits of the United States.* The increase can only be held to be given as a compensation to the civilian clerk employees of the United States residing within its continental limits to forego the advantages of such residence and reside temporarily in a less desirable locality and climate. It would not in any case for such reason be offered to one resident in the Islands as a compensation to him for accepting a post within the limits of the Islands, because naturally, in view of his residence there, it would not have seemed necessary to offer him such a compensation.

JAMES M. BECK,
Solicitor General.
MERRILL E. OTIS,
Special Assistant to the Attorney General.
JOHN G. EWING,
Attorney.

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Appendix A

Provision of the Army Appropriation Act for 1895, being the Act of August 6, 1894 (28 Stat. 236); and which reads as follows:

> For clerks and messengers at the headquarters of the Army and at the several department headquarters; at the recruiting headquarters and depots; at the Military Academy at West Point; at the Artillery School at Fort Monroe, Virginia; at the Infantry and Cavalry School at Fort Leavenworth, Kansas; and at the Cavalry and Light Artillery School at Fort Riley, Kansas, not exceeding ninety clerks, at one thousand dollars each; twenty-five clerks, at one thousand one hundred dollars each; ten clerks, at one thousand two hundred dollars each; and forty-five messengers, at seven hundred and twenty dollars each, one hundred and fifty-two thousand eight hundred dollars; and said clerks and messengers shall be employed and apportioned to the several headquarters and stations by the Secretary of War. And the "Act for the enlistment and pay and to define the duties and liabilities of 'general-service clerks' and 'general-service messengers' in the Army," approved July twenty-ninth, eighteen hundred and eighty-six, is hereby repealed.

Summary of provisions for clerks and messengers at headquarters in the Army Appropriation Acts, 1896–1914:

1896 (28 Stat. 655). Similar to the Act of August 6, 1894.

1897 (29 Stat. 61). Similar to the preceding Act. The designation in the margin of said Act reads, "Clerks and messengers at headquarters."

1898 (29 Stat. 610). Similar to the preceding Act.

1899 (30 Stat. 318). Similar to the preceding Act.

1900 (30 Stat. 1065). The heading of the appropriation reads as follows: "Pay to clerks and messengers at department headquarters and at headquarters of the Army." In the margin the designation is, "Clerks and messengers at headquarters." The number of clerks is increased to 190 and the messengers to 68.

1901 (31 Stat. 207). The heading of this appropriation is the same as in the preceding Act and the number of clerks and messengers appropriated for is the same.

1902 (31 Stat. 899). Similar to the preceding Act, with the exception that the number of clerks appropriated for is 191.

1903 (32 Stat. 509). Similar to the preceding Act.

1904 (32 Stat. 930). The heading of the appropriation is "Pay to clerks and messengers at department headquarters, at headquarters of the Army, or that of the Chief of Staff." In the margin they are set out as "Clerks and messengers at headquarters." Otherwise, the terms of this appropriation are similar to the preceding.

1905 (33 Stat. 261). The heading and terms of the appropriation are similar to the preceding.

1906 (33 Stat. 829). The heading of the appropriation reads: "Pay to clerks, messengers, and laborers at headquarters of divisions, and departments and office of the Chief of Staff." The number of clerks provided for is 214, messengers 73, and laborers 2. There is added this proviso:

> *Provided,* That no clerk, messenger, or laborer at headquarters of divisions, depart-

ments, or office of the Chief of Staff shall be assigned to duty with any bureau in the War Department.

1907 (34 Stat. 243). The heading and terms of the appropriation are similar to the preceding. The number of clerks provided is 225, captain of the watch 1, gardener 1, packer 1, messengers 78, laborers 4, and charwomen 5. The proviso with regard to assignment is contained in this and in all subsequent appropriation Acts.

1908 (34 Stat. 1161). Similar in all respects to the preceding appropriation.

1909 (35 Stat. 111). Similar to the preceding appropriation; number of clerks 229, captain of the watch 1, watchmen 3, gardener 1, packer 1, messengers 78, laborers 4, and charwomen 5.

1910 (35 Stat. 736). Similar in all respects to the preceding appropriation.

1911 (36 Stat. 246). The heading of the appropriation reads: "Pay to clerks, messengers, and laborers at headquarters of divisions, and departments, and posts commanded by general officers, and office of the Chief of Staff." The number of clerks and other employees and the paragraph as to assignment and the proviso attached thereto are the same as in the preceding Act.

1912 (36 Stat. 1040). The heading of the appropriation is the same as the preceding, and the sole change in the entire appropriation is an increase of the clerks to 234.

1913 (37 Stat. 573). The appropriation is similar to the preceding, with the exception of a change in the number of clerks to 210 and messengers to 67.

1914 (37 Stat. 707). Similar in all respects to the preceding Act.

APPENDIX B

Provision of the Army Appropriation Act for 1915, being the Act of April 27, 1914 (38 Stat. 355), and which reads as follows:

PAY TO CLERKS, MESSENGERS, AND LABORERS AT HEADQUARTERS OF THE SEVERAL TERRITORIAL DEPARTMENTS, TERRITORIAL DISTRICTS, TACTICAL DIVISIONS AND BRIGADES, SERVICE SCHOOLS, AND OFFICE OF THE CHIEF OF STAFF

One chief clerk, at the office of the Chief of Staff, $2,000 per annum.

Fifteen clerks, at $1,800 each per annum.

Fifteen clerks, at $1,600 each per annum.

Thirty-eight clerks, at $1,400 each per annum.

Seventy clerks, at $1,200 each per annum.

Sixty-five clerks, at $1,000 each per annum.

Six clerks (Filipinos), at $500 each per annum.

One captain of the watch, at $900 per annum.

Three watchmen, at $720 each per annum.

One gardener, at $720 per annum.

One packer, at $840 per annum.

Two messengers, at $840 each per annum.

Fifty-nine messengers, at $720 each per annum.

Six messengers (Filipinos), at $300 each per annum.

One laborer, at $660 per annum.

Two laborers, at $600 each per annum.

One laborer, at $480 per annum.

Five charwomen, at $240 each per annum.

In all, $312,320.

Additional pay while on foreign service, $9,000.

Provided, That on and after July first, nineteen hundred and fourteen, the pay of clerks and messengers at headquarters of territorial departments, tactical divisions, brigades, and service schools, who are citizens of the United States, shall be increased $200 each per annum while serving in the Philippine Islands, such service to be computed from the date of departure from the continental limits of the United States to the date of return thereto: *Provided further*, That the money hereby appropriated for such of said clerks at $1,200 and $1,000 each per annum and such of said messengers at $720 each per annum as may be employed and assigned by the Secretary of War to the headquarters of the Philippine Department, districts and posts therein, may, in case of vacancy and in the discretion of the commanding general, Philippine Department, be expended in whole or in part for the employment of Filipinos as clerks at not to exceed $5[illegible] each per annum and messengers at not to exceed $300 each per annum.

And said clerks, messengers, and laborers shall be employed and assigned by the Secretary of War to the offices and positions in which they are to serve: *Provided*, That no clerk, messenger, or laborer at headquarters of tactical divisions, military departments, brigades, service schools, and office of the Chief of Staff shall be assigned to duty with any bureau in the War Department.

Army Appropriation Act, 1916 (38 Stat. 1067): The provisions for the clerks and messengers at headquarters in said Army Appropriation Act, with the provisos attached thereto, are identical with those of the Act of 1915, given above.

Appendix C

Provision of the Army Appropriation Act for 1917 being the Act of August 29, 1916 (39 Stat. 625), and which reads as follows:

CLERKS AND MESSENGERS FOR HEADQUARTERS OF THE SEVERAL TERRITORIAL DEPARTMENTS, DISTRICTS, DIVISIONS AND BRIGADES, AND SERVICE SCHOOLS

Seven clerks, at $2,000 each per annum, $14,000.

Eleven clerks, at $1,800 each per annum, $19,800.

Fourteen clerks, at $1,600 each per annum, $22,400.

Thirty-two clerks, at $1,400 each per annum, $44,800.

Fifty-seven clerks, at $1,200 each per annum, $68,400.

Forty-nine clerks, at $1,000 each per annum, $49,000.

Thirty-nine messengers, at $720 each per annum, $28,080.

In all, $246,480.

Additional pay while on foreign service, $9,000.

For commutation of quarters and of heat and light, $53,742.

Hereafter headquarters clerks shall be known as Army field clerks and shall receive pay at the rates herein provided, and after twelve years of service, at least three years of which shall have been on detached duty away from permanent station, or on duty beyond the continental limits of the United

States, or both, shall receive the same allowances, except retirement, as heretofore allowed by law to pay clerks, Quartermaster Corps, and shall be subject to the rules and articles of war.

Hereafter not to exceed two hundred clerks, Quartermaster Corps, who shall have had twelve years of service, at least three years of which shall have been on detached duty away from permanent station, or on duty beyond the continental limits of the United States, or both, shall be known as field clerks, Quartermaster Corps, and shall receive the same allowances, except retirement, as heretofore allowed by law to pay clerks, Quartermaster Corps, and shall be subject to the rules and articles of war.

For commutation of quarters and of heat and light, $67,600.

Provided, That said clerks, messengers, and laborers shall be employed and assigned by the Secretary of War to the offices and positions in which they are to serve: *Provided*, That no clerk, messenger, or laborer at headquarters of tactical divisions, military departments, brigades, service schools, and office of the Chief of Staff shall be assigned to duty in any bureau in the War Department.

Summary of provisions for headquarters clerks and messengers in the Army Appropriation Acts, 1918–1924.

1918 (40 Stat. 46). "Clerks and messengers at headquarters of the several territorial departments, territorial districts, tactical divisions and brigades, and service schools." Provides for 170 clerks and 39 messengers. Then follows additional pay while on foreign service, $7,600. Then follows appropriation for commutation of quarters and of heat and

light. Then follows commutation of quarters and of heat and light for field clerks, Quartermaster Corps. The two provisos in the Act for 1907 then follow.

1919 (40 Stat. 852). Heading similar to the preceding. The number of clerks is 4,672, and of messengers 139. The amount of additional pay provided while on foreign service is $7,600. Then follows the following provision:

> That during the present emergency Army field clerks shall have the same allowances and benefits as heretofore allowed by law to pay clerks, Quartermaster Corps, not including retirement: Provided, however, that the minimum as entrance pay, exclusive of said allowances, of said Army field clerks shall be $1,200 per annum: Provided further, That Army field clerks shall receive the same increase of pay for service beyond the continental limits of the United States as is now allowed by law to commissioned officers of the Army.

Then follows an appropriation for commutation of quarters, heat and light for the army field clerks; then an appropriation of quarters and of heat and light for field clerks of the Quartermaster Corps; then the two provisos found at the end of the appropriation for the year 1917.

1920 (41 Stat. 111). The heading of the appropriation item reads, "Pay of Army field clerks and Civil Service messengers at headquarters of the several territorial departments, Army and Corps headquarters, territorial districts, tactical divisions and brigades, services chools, camps, and ports of embarkation and debarkation." Provides for 1,170 clerks and 158 messengers. Then follows, additional pay while on foreign service, $8,000. Then follows appropria-

tion for commutation of quarters and of heat and light. Then comes the following:

> *Provided*, That Army field clerks shall have the same allowances and benefits as heretofore allowed by law to pay clerks, Quartermaster Corps, not including retirement: *Provided, however*, That the minimum as entrance pay, exclusive of said allowances, of said Army field clerks, shall be $1,200 per annum: *Provided further*, That Army field clerks shall receive the same increase of pay for service beyond the continental limits of the United States as is now allowed by law to commissioned officers of the Army: *And provided further*, That the Secretary of War is authorized to employ, during the present emergency, and for a period not exceeding four months thereafter, such additional Army field clerks as may be necessary, not exceeding 4,272.

Then follows the appropriation for commutation of quarters, of heat and light for the field clerks, Quartermaster Corps. Then follow the two provisos that appear at the end of the Act for 1907.

1921 (41 Stat. 955). The same heading as in the preceding Act. Provides for 675 Army field clerks and 100 messengers. Provides for additional pay while on foreign service, $7,072. Provides for commutation of quarters and of heat and light for Army field clerks and for commutation of quarters, heat and light for field clerks, Quartermaster Corps. Then follow the two provisos at the end of the Act for 1907.

1922 (42 Stat. 75). Same heading as in preceding Act. Provides for 400 Army field clerks and 100 messengers and increased pay for 400 Army field clerks, as provided by the Act of May 18, 1920 (41 Stat. 602). Then follows additional pay while

on foreign service, $5,000. Then follows commutation of quarters and of heat and light. Then follows appropriation for similar commutation for field clerks, Quartermaster Corps. Then follow the two provisos at the end of the Act for 1907.

1923 (42 Stat. 724). Heading the same as in preceding Act. Provides for 260 Army field clerks and 65 messengers. Then follows the provision:

> No clerk, messenger, or laborer at headquarters of tactical divisions, military departments, brigades, service schools, and office of the Chief of Staff shall be assigned to duty in any Bureau of the War Department.

1924 (42 Stat. 1384). The heading of the item runs:

> Pay of Army Field Clerks and Civil Service Messengers at headquarters of the several territorial departments, corps areas, army and corps headquarters, territorial districts, tactical divisions and brigades, service schools, camps, and ports of embarkation and debarkation.

Provides for the salaries of 303 Army field clerks and 65 messengers. Then follow two paragraphs:

> The provision in the Act approved April 27, 1914, making appropriations for the support of the Army for the fiscal year ending June 30, 1915, that the pay of clerks and messengers at headquarters of territorial departments, tactical divisions, and brigades and service schools, who are citizens of the United States, shall be increased $200 each per annum while serving in the Philippine Islands, is hereby repealed.
>
> No clerk, messenger, or laborer at headquarters of tactical divisions, military departments, brigades, service schools, and office of the chief of staff shall be assigned to duty in any bureau of the War Department.

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